# THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 06.07.2007

+ **CS (OS) 2375/1998 & Probate Case No. 20/1998**

**MRS. PAMELA KUMAR** ...Plaintiff

- versus -

**MR CHANDRASHEKHAR & ORS.** ...Defendants

**Advocates who appeared in this case:**
For the Plaintiff : Plaintiff-in-person
For the Defendant : Mr R. S. Endlaw

**CORAM:-**
**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

1. Whether Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in Digest? Yes

**BADAR DURREZ AHMED, J**

1. The suit as well as the probate case have been instituted by Mrs. Pamela Kumar. Both the matters were heard together on the preliminary issues framed therein. Since the facts are common to both the suit and the probate case, this common judgment shall dispose of the preliminary issues in both the matters.

2. The suit is essentially one of partition and possession in respect of the property bearing No. 28, Fire Brigade Lane, New Delhi. Mrs. Pamela

Kumar (the plaintiff) claims a half share in the said suit property. On the basis of such claim she seeks a decree of partition and possession in respect of the said half share as also mesne profits against the defendant No.1 (Mr Chandrashekhar). The other defendants, namely, Mr Arun Mohan (defendant No.2), Mrs Lalita Steinmetz (defendant No.3), Mrs Mala Goel (defendant No.4), the Land and Development Office (defendant No.6) and the District Judge, Tis Hazari (defendant No.7) are not contesting defendants. The defendant No.5 had been deleted vide order dated 15.10.2001. In the suit the plaintiff ( Mrs. Pamela Kumar) has also sought a declaration that the decree dated 02.09.1966 in RFA No. 140-D/1962 is null and void.

3. The probate case has been filed by Mrs. Pamela Kumar seeking probate of a purported Will of February 1954 alleged to have been executed by late Mr Chandra Mohan Lal in favour of late Mr Radhe Mohan Lal. Late Mr Chandra Mohan Lal and late Mr Radhe Mohan Lal were brothers. The defendant No.1 (Mr Chandrashekhar) claims to be the adopted son of late Mr Chandra Mohan Lal and his wife late Mrs. Gomti Devi.

4. The facts of the suit as well as the probate case are common and are intertwined. Mrs. Pamela Kumar claims to be the half owner of the suit property on account of her being the daughter of late Mr Radhe Mohan Lal, who in turn, according to her, derived title over the same because of the

purported Will of 1954 executed by his brother late Mr Chandra Mohan Lal in his favour. She also submits that the said Will of February 1954 is in the possession of her brother Mr Arun Mohan (defendant No.2), who has chosen not to produce the same in collusion with Mr Chandrashekhar (defendant No.1).

5. On the other hand, the defendant No.1, who is the contesting defendant in the suit, has claimed title over the entire suit property on the basis of a registered Will dated 18.03.1954 executed by late Mr Chandra Mohan Lal whereby a life interest was granted in favour of his widow Mrs Gomti Devi and thereafter the entire suit property was to devolve upon Mr Chandrashekhar. It appears that there was another prior Will executed by late Mr Chandra Mohan Lal on 14.04.1953 by which the suit property was divided into two shares and was to devolve upon Mrs. Gomti Devi and the defendant No.1 (Mr Chandrashekhar) in equal measure. That Will was also a registered Will. However, the defendant No.1 (Mr Chandrashekhar) contended that the earlier Will stood revoked and cancelled by the subsequent Will of 18.03.1954. Therefore, the entire suit property devolved upon him. It must be noted that there was litigation between Mr Chandrashekhar and Mrs Gomti Devi in respect of the said Wills and the suit property. The nature of the litigations would become clear upon noting the chronology of events.

6. It is an admitted position that late Mr. Chandra Mohan Lal was the owner of the building standing on 28 Fire Brigade Lane, Connaught Place, New Delhi. It is also admitted that late Mr. Chandra Mohan Lal had leasehold rights over the land. The lease was granted to late Mr Chandra Mohan Lal on behalf of the President of India through the Land and Development Office (the defendant No.6). Late Mr Chandra Mohan Lal had executed an adoption deed on 26.02.1953 adopting Mr Chandrashekhar (who was the minor son of Mr Tara Chand Brij Mohan). The said adoption deed was registered with the Sub-Registrar, Kashmere Gate, Delhi on 26.02.1953. It is, however, the case of the plaintiff that no adoption as per Hindu religious rites and ceremonies was performed and that late Mrs Gomti Devi never accepted Mr Chandrashekhar as her son and he continued to live with his biological parents. In other words, Mrs. Pamela Kumar (the plaintiff in the suit) while acknowledging the registered adoption deed claims the same to be of no effect under Hindu law. On 14.04.1953, late Mr Chandra Mohan Lal executed a registered Will bequeathing, *inter alia*, the suit property equally to his wife Mrs Gomti Devi and to his adopted son Mr Chandrashekhar.

7. Mrs. Pamela Kumar has alleged that another Will was executed by late Mr Chandra Mohan Lal sometime in February 1954 by which the suit property was bequeathed in favour of late Mr Radhe Mohan Lal (the plaintiff's father). This Will is disputed by the defendant No.1 (Chandrashekhar). Mrs.

Pamela Kumar has not been able to produce a copy of this Will though she has alleged that this Will has been suppressed by her brother Mr Arun Mohan (the defendant No.2) in collusion with Mr Chandrashekhar (the defendant No.1). However, it is an admitted position that this purported Will of February 1954 was unregistered.

8. On 18.03.1954 late Mr Chandra Mohan Lal by another registered Will bequeathed a life interest in the suit property in favour of his wife Mrs Gomti Devi and thereafter the property in question was to devolve upon his adopted son Mr Chandrashekhar. The original Will dated 18.03.1954 is in Urdu. An English translation of the said will dated 18.03.1954 has also been placed on record. In this Will dated 18.03.1954, there is a reference to the adoption and the registered deed of adoption dated 26.02.1953. This Will also contains a statement by the testator to the following effect:-

> "I revoke and cancel absolutely all my previous Wills and they will not be acted upon in any manner and shall be deemed to be void and of no effect."

9. On 05.03.1955 Mr Chandra Mohan Lal passed away. On 22.03.1955 his widow (Mrs Gomti Devi) applied for a succession certificate in respect of the shares left by late Mr Chandra Mohan Lal on the basis of the Will dated 18.03.1954. The said petition was registered as No. 110/1955 before the Sub-Judge, Delhi. On 01.06.1955 Mr Chandrashekhar filed a petition being No. 185/1955 in the Court of the Sub-Judge, Delhi for grant of succession certificate with respect to the same shares left by late Mr Chandra

Mohan Lal on the basis of the Will dated 14.04.1953. It is pertinent to note that notices of both the petitions for grant of succession certificate were issued to the close relatives of late Mr Chandra Mohan Lal, which included his brother late Mr Radhe Mohan Lal. It is also noteworthy that late Mr Radhe Mohan Lal did not file any objections or claimed any title in respect of the properties on the basis of the purported Will of February 1954, which is now being sought to be set up by his daughter Mrs. Pamela Kumar.

10. In 1957, Mr Chandrashekhar filed a suit No. 50/1957 for partition of properties of late Mr Chandra Mohan Lal. Mrs. Pamela Kumar claims that a succession certificate had been granted in 1957 in favour of her father late Mr Radhe Mohan Lal in respect of the suit property on the basis of the Will of February 1954. This claim of Mrs. Pamela Kumar is without any basis as firstly, no such succession certificate has been produced and secondly, a succession certificate is not granted in respect of immovable properties.

11. On 21.05.1962 the Sub-Judge, Delhi dismissed the suit for partition filed by Mr Chandrashekhar against Mr Gomti Devi and upheld the validity of the Will dated 18.03.1954 left by late Mr Chandra Mohan Lal. This was followed by an order dated 05.06.1962 whereby succession certificate was granted in favour of Mrs Gomti Devi in respect of the shares left by late Mr Chandra Mohan Lal. The said order was passed on the basis of the Will dated

18.03.1954. The application for grant of succession certificate in favour of Mr Chandrashekhar was rejected.

12. Being aggrieved by the dismissal of the suit, Mr Chandrashekhar filed an appeal in 1962 being RFA No. 140-D/1962. During the pendency of the said appeal, a compromise was arrived at. An application (CM No. 3166-D/1966) was filed in the said appeal (RFA 140-D/1962) for recording the compromise. On 02.09.1966 a Division Bench of this Court proceeded to record the compromise and disposed of the appeal in terms of the compromise. The essential features of the compromise were that Mrs. Gomti Devi would remain in possession of the suit property as life owner subject to the restrictions mentioned in the compromise deed. It was further provided in the compromise that on the death of Mrs Gomti Devi, Mr Chandrashekhar would be entitled to enter into possession of the whole house as the full owner. The compromise also noted that all the Wills made by late Mr Chandra Mohan Lal and Mrs Gomti Devi stand cancelled and would have no effect. It was also provided that the applications for grant of succession certificate, both by Mrs Gomti Devi and Mr Chandrashekhar, had now become infructuous and the same be dismissed as such. Accordingly, FAO Nos. 32-D to 35-D, which were in respect of orders passed on the succession certificate petitions were allowed and consequently the original petitions for grant of succession certificates bearing Nos. 110/1955 and 185/1955 filed by Mrs Gomti Devi and Mr

Chandrashekhar respectively were also dismissed by the said order passed by the Division Bench. In the compromise terms it is also clearly recorded that late Mr Chandra Mohan Lal was the adoptive father of Mr Chandrashekhar.

13. Mrs. Pamela Kumar has alleged that on 08.06.1974 her father Mr Radhe Mohan Lal executed a Will. A copy of the Will has been placed on record by Mrs. Pamela Kumar in the probate case along with other documents filed on 15.05.2004. Without commenting on the authenticity of the Will, it is clear that the purported Will dated 08.06.1974 itself does not carry any mention of the suit property (i.e., 28 Fire Brigade Lane, New Delhi). On 12.06.1977, late Mr Radhe Mohan Lal also passed away. Letters of Administration were granted in favour of Mr Arun Mohan (defendant No.2 in the suit) in respect of the properties under the said Will dated 08.06.1974 of late Mr Radhe Mohan Lal. Notably, as mentioned above, the suit property was not mentioned at all in the said Will. On 30.07.1984 Mrs Gomti Devi also passed away. Thereafter, Mr Chandrashekhar initiated eviction proceedings against the tenant in the suit property. On 15.09.1998, the said tenant gave an undertaking before this Court to vacate the property on or before 30.04.2000. In 1998 itself the suit as well as the probate case were filed by Mrs. Pamela Kumar. During the pendency of the suit and the probate case Mrs. Pamela Kumar filed CM No. 451/2000 in the disposed of RFA 140-D/1962. This application (CM 451/2000) was filed under Section 5 of the Limitation Act, 1963 seeking condonation of delay in

recalling the order passed on 02.09.1966 in RFA No. 140-D/1962. The application had been filed 34 years after the passing of the order dated 02.09.1966 whereby the compromise between late Mrs Gomti Devi and Mr Chandrashekhar had been recorded and the said RFA No. 140-D/1962 had been partly allowed. The said application came up for hearing on 07.09.2000 before a Division Bench of this Court which dismissed the same in, *inter alia*, the following manner:-

> "We have gone through the contents of the application and also the reply filed on behalf of Shri Chander Shekhar.
>
> Needless to add that Smt. Gomti Devi, who was respondent No.1 in the appeal and on whose behalf Smt. Pamela Kumar claims to acquire title expired on 30.07.1984. No proceedings were taken by her during her life time seeking to set aside the compromise decree. It is also worthwhile to notice that the applicant Smt. Pamela Kumar had on 21.10.1998 filed a suit (S. No. 2375/98) in the Original Side of this Court against Shri Chander Shekhar and others seeking a declaration that the decree dated 2.9.1966 passed in RFA No. 140-D/62 was null and void for various reasons. There is no explanation offered even for the period from the date of filing of the suit for not filing the application seeking to set aside the decree what to say for the period prior thereto. Decree was passed when Smt. Gomti Devi was alive. She did not take any steps for reviewing the decree. An application (CM 265D/69) was filed by her for clarification. It was dismissed on 9.12.1969. Another application (CM. 14/71) was filed by her for clarification. It was also dismissed on 28.4.1971. The application now moved by Smt. Pamela Kumar is not only not maintainable but is hopelessly barred by limitation. Even otherwise there is no substance in what is stated by the applicant in the review application and on any of the ground alleged the the decree, which was passed on 2.9.1966 cannot be recalled.

Dismissed."

CM Nos. 450/2000, 1342/2000 and 783/2000 all filed in RFA No. 140-D/1962 were also dismissed by the said order.

14. It is on the basis of the aforesaid facts and circumstances that the defendant No.1 (Mr Chandrashekhar) has contended that the present suit and the probate case are palpably barred by time and are in abuse of the process of this Court and both the suit and the probate case ought to be dismissed on this ground alone. In view of these submissions the following preliminary issues were framed in the suit:-

> "CS(OS) No. 2375/1998
>
> Following preliminary issues are framed:-
>
> (1) Whether the suit is an abuse of the process of law?
>
> (2) Whether the suit is barred by limitation on the pleadings as laid in the suit?
>
> Parties clearly understand that the first issue would be decided in the context of the pleadings of the parties, certified copies of judicial orders passed and as placed on record by defendant No.1 as also the plea of the defendants that late Sh. Radhe Mohan Lal, predecessor-in-interest of the plaintiff never laid any claim to the suit property and in said context, issue of abandonment by the predecessor-in-interest in respect of the suit property would be covered."

Similarly, in the probate case, the following preliminary issues were framed:-

> "Probate Case No.20/1998

Following preliminary issues are framed:-

(1) Whether the petition suffers from laches and if yes, effect thereof?

(2) What would be the effect of the petitioner not stating facts to show that her predecessor-in-interest namely, late Sh. Radhe Mohan Lal asserted title, right or interest in the property in respect of which letter of administration is being issued?"

15. Since the issue of limitation and/ or laches arises in both the suit and the probate case, I shall take up consideration of the same together. Insofar as the suit is concerned, the prayer contained therein is with regard to possession of immovable property and/ or an interest therein based on title. The relevant provision would be Article 65 of the Schedule to the Limitation Act, 1963, which prescribes a period of limitation of 12 years and the time from which the period begins to run is when the possession of the defendant becomes adverse to the plaintiff. In the present case it is an admitted position that the entire suit property belonged to late Mr Chandra Mohan Lal. He passed away on 05.03.1955. The defendant No.1 (Mr Chandrashekhar) claimed title over the entire property on the basis of the Will of late Mr Chandra Mohan Lal executed on 14.04.1953. On the other hand, Mrs Gomti Devi resisted the claim on the basis of the Will dated 18.03.1954 whereby she had a life interest in the same. The suit filed by Mr Chandrashekhar (the defendant No.1) was dismissed by the Sub-Judge, Delhi on 21.05.1962. The appeal filed therefrom being RFA No.140-D/1962 was ultimately disposed of

by a compromise decree on 02.09.1966. As mentioned above, the essential feature of the compromise was that Mrs Gomti Devi would remain in possession of the suit property as life owner subject to certain restrictions. However, on her death, Mr Chandrashekhar would be entitled to enter into possession of the whole house as full owner. This is where the matter rests. Mrs Gomti Devi passed away on 30.07.1984. Even in respect of the tenant in a portion of the suit property, Mr Chandrashekhar initiated eviction proceedings after the death of Mrs Gomti Devi. In other words, Mr Chandrashekhar has been in possession of the suit property at least on and from 30.07.1984 claiming complete ownership over the same. Even if the period prior to 30.07.1984 is ignored for the time being, the time from which the period of limitation would begin to run would be 30.07.1984. The suit was filed in 1998 beyond the period of 12 years prescribed under the Limitation Act, 1963. This is apart from the question as to whether Mrs Pamela Kumar has any right, title or interest in the suit property at all because she claims her interest through her father late Mr Radhe Mohan Lal, who also passed away on 12.06.1977. Mr Radhe Mohan Lal never laid any claim to the suit property during his life time although he was aware of the proceedings between the defendant No.1 and Mrs Gomti Devi. Thus, whether the starting point of limitation is computed from the date of death of Mrs Gomti Devi in 1984 or of Mr Radhe Mohan Lal in 1977, the suit is hopelessly time barred.

16. Insofar as the probate case is concerned, Mrs Pamela Kumar is seeking Letters of Administration in respect of the purported Will of February 1954 alleged to have been executed by late Mr Chandra Mohan Lal. Although no specific period of limitation has been specified for moving an application seeking Letters of Administration/ probate in respect of a Will, the principle of laches and inordinate delay would be clearly applicable. The said Will was allegedly executed on or about February 1954. The probate case was filed in 1998. Late Mr Chandra Mohan Lal passed away on 05.03.1955. Therefore, the probate case was filed 43 years after Mr Chandra Mohan Lal had passed away. It is, therefore, clear that the probate case also suffers from laches and cannot be entertained at this belated stage. This is apart from the question of merits.

17. Accordingly, issue No.2 in the said suit is decided against the plaintiff and I hold that the suit is barred by limitation on the basis of pleadings as laid in the suit. Issue No.1 in the probate case is also held against the petitioner (Mrs Pamela Kumar) inasmuch as the probate case suffers from laches. Both on the ground of limitation and on the ground of laches, the suit as well as the probate case are liable to be dismissed.

18. I now take up issue No.1 in the said suit: - whether the suit is an abuse of the process of law? Before proceeding with the discussion on the factual aspects of the present case, it would be relevant to note the following

observations of the Supreme Court in the case of ***K. K. Modi v. K. M. Modi & Ors. : AIR 1998 SC 1297***:-

> "44. One of the examples cited as an abuse of the process of Court is re-litigation. It is an abuse of the process of the Court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him. The re-agitation may or may not be barred as resjudicata. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of the Court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the Court. Frivolous or vexatious proceedings may also amount to an abuse of the process of Court especially where the proceedings are absolutely groundless. The Court then has the power to stop such proceedings summarily and prevent the time of the public and the Court from being wasted. undoubtedly, it is a matter of Courts' discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. The Court should be satisfied that there is no chance of the suit succeeding."

The above observations of the Supreme Court make it clear that a proceeding being filed for a collateral purpose or a spurious claim being made in a litigation may, also, in a given set of facts, amount to an abuse of the process of the Court. The Supreme Court also observed that frivolous or vexatious proceedings may also amount to an abuse of the process of Court especially where the proceedings are absolutely groundless. In such a situation, the Supreme Court observed that the Court has the power to stop such proceedings summarily so as to prevent the time of the public and the Court from being wasted. There is no doubt that the discretion vested in the Court, as to whether

or not proceedings should be stopped, has to be exercised with circumspection. The guiding principle for the exercise of such discretion is that the Court should be satisfied that there is no chance of the suit succeeding.

19. In the light of the aforesaid legal parameters, let me now examine the factual matrix of this case. Mrs Pamela Kumar has filed the suit, firstly, for a declaration that the decree dated 02.09.1966 passed in RFA No.140-D/1962 be declared null and void. It is reiterated that the said decree dated 02.09.1966 was passed in an appeal by a Division Bench of this Court. The decree was based on a compromise entered into between the defendant No.1 (Mr Chandrashekhar) and Mrs Gomti Devi. During her life time Mrs Gomti Devi did not challenge the said compromise decree. As noted above, Mr Radhe Mohan Lal, through whom Mrs Pamela Kumar claims title, did not stake any claim to the suit property although he was aware of the proceedings between Mr Chandrashekhar and Mrs Gomti Devi. In fact, even in his Will of 1974, Mr Radhe Mohan Lal did not make any specific mention of the suit property. Clause 20 of the said Will of 1974 makes a reference to properties not specifically mentioned in the Will. The said clause reads as under:-

> "20. If there is any other property belonging to me regarding which I have not made any Will in the above paragraphs, the same shall belong to the person who is in possession of the same."

Even if the aforesaid clause is taken into account, Mrs Pamela Kumar cannot claim title because, firstly, Mr Radhe Mohan Lal never laid claim to the suit property and Mrs Pamela Kumar, who is claiming title through him, cannot raise such a claim when the predecessor-in-interest himself did not stake any such claim in the suit property throughout his life time. Secondly, Mrs Pamela Kumar was never in possession of the suit property and at the time of death of late Mr Radhe Mohan Lal (in 1977), it was Mrs Gomti Devi who was in possession of the suit property in terms of the decree of 02.09.1966 passed in RFA No. 140-D/1962. Therefore, in any way the matter is looked at, Mrs Pamela Kumar cannot raise any claim to the suit property.

20. The most important circumstance which comes in the way of Mrs Pamela Kumar is the fact that the decree of 02.09.1966 remained unchallenged for over 32 years till the filing of the suit by her. Moreover, Mrs Pamela Kumar's application filed in the disposed of RFA No. 140-D/1962 has also been dismissed by a Division Bench of this Court on 07.09.2000 wherein it has been clearly recorded that her application was hopelessly barred by limitation. The Division Bench also went on to hold:-

> "Even otherwise there is no substance in what is stated by the applicant in the review application and on any of the ground alleged the the decree, which was passed on 2.9.1966 cannot be recalled."

In other words, the compromise decree dated 02.09.1966 stands. Unless and until the said compromise decree was set aside, the plaintiff would have no

occasion to raise any claim in respect of the suit property. As such, in my opinion, there is no chance of the suit succeeding. The suit is, therefore, in my opinion based on a spurious claim and would amount to a frivolous or vexatious proceeding. That being the case, it would fall within the parameters indicated by the Supreme Court in the case of ***K. K. Modi*** *(supra)* of an example of an abuse of the process of Court. Consequently, this Court has power to stop further proceedings in the suit summarily so as to prevent further wastage of public time as well as the time of the Court. Accordingly, issue No.1 in the suit is held against the plaintiff inasmuch as the suit is an abuse of the process of law. On this ground also the suit is liable to be dismissed summarily.

21. This leaves the discussion with respect to issue No.2 in the probate case. The issue pertains to the effect of the petitioner not stating facts to show that her predecessor-in-interest, namely, late Mr Radhe Mohan Lal, asserted right, title or interest in the suit property. This issue has partially been discussed above while discussing other issues. Mrs Pamela Kumar claims title over the suit property through her father late Mr Radhe Mohan Lal. Her lineage of title is through the Will executed by late Mr Radhe Mohan Lal in 1974 and traced up to the Will of late Mr Chandra Mohan Lal, which was purportedly executed in February 1954. It is therefore, her claim that late Mr Chandra Mohan Lal executed a Will in February 1954 in favour of her father

late Mr Radhe Mohan Lal, who in turn executed a Will in 1974. However, it must be noted that the purported Will of February 1954 stood cancelled and / or revoked by the subsequent registered Will of 18.03.1954, which Will is admitted by all parties. Furthermore, late Mr Radhe Mohan Lal did not make any specific mention of the suit property in his Will of 1974. The residuary clause 20 in the Will also does not help Mrs Pamela Kumar, as already indicated above. The clear and admitted position is that late Mr Radhe Mohan Lal never asserted any right, title or interest in the property in question. This fact ought to have been disclosed by Mrs Pamela Kumar in her petition. However, without going into the question as to whether the non-disclosure of this fact would by itself be fatal to the petition or not, it is apparent, for more reasons than one, that the probate case cannot be continued. First of all, the petition suffers from laches, as already indicated above. Secondly, the petition would be an exercise in futility because even if it is assumed that late Mr Chandra Mohan Lal left a Will executed in February 1954, the same would have no effect because of the subsequent Will of 18.03.1954 revoking and cancelling all prior Wills.

22. In view of the aforesaid discussion and the findings returned on the preliminary issues, the suit as well as the probate case are dismissed with costs.

**BADAR DURREZ AHMED**
**(JUDGE)**

**July 06, 2007**
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